

FISCAL NOTE

Bill #: SB0397

Title: Just compensation to property owners for government regulatory restrictions

Primary Sponsor: Curtiss, A

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	\$0	\$0
Revenue:		
General Fund	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|---|
| <input type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

State Agencies

1. Several state agencies responded that it cannot be determined whether they would in the future adopt, first apply, or first enforce a regulation that requires compensation and it cannot be determined, if an agency were to do so, what the fiscal impact would be. Two agencies responded with specifics.

Department of Fish, Wildlife and Parks

2. The FWP legal staff will analyze all current and new rules to determine impact on property owners based on this law.
3. The FWP legal staff will develop the FWP guidelines to be used prior to any department rules with potential impact.
4. Both the development of the guidelines and the review of the rules will be absorbed as a function of existing staff.
5. The FWP regulates several commercial activities, which could fall under this act. In addition, season setting, especially big game hunting, where limits on permits could allegedly reduce the opportunity for a landowner to outfit on his or her land and therefore reduce the value of the property.

Department of Environmental Quality

6. Compensation is not required for restrictions on use of land that are required by federal law.

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(continued)

7. Compensation is required only when a property owner is prohibited from using property for a particular purpose, not when the property owner may use the property for all purposes subject to requirements that may involve an expense to comply with the requirements.
8. The bill is not retroactively applicable. Therefore, compensation is required only for regulations adopted, first enforced, or first implemented after the effective date of the bill.
9. Compensation is required only when the regulation imposing the restriction was adopted, first applied, or first enforced after the current owner acquired the land.
10. The term "current owner" means the person who owns the land at the time the person files a claim for compensation. It does not mean the person who owned the land on the effective date of the bill.
11. Compensation of a claim is not required if the agency has applied or enforced the regulation with respect to any property, whether or not owned by the claimant, prior to the claimant acquiring ownership of the property that is the subject of a claim.
12. The DEQ will not adopt, first apply, or first enforce a regulation that requires compensation during the coming biennium.

FISCAL IMPACT:

Not determinable.

LONG-RANGE IMPACTS:

1. SB 397 would require compensation for restrictions on use even if the landowner does not intend to engage in that use or sell the property to a person who wishes to engage in that use. Long-range fiscal impacts could therefore be significant, but it is not possible to estimate these impacts.

TECHNICAL NOTES:

1. Section 2(1) does not clearly indicate whether imposition of requirements on a use of land (e.g., a requirement that a strip mining operation reclaim the land) is within the meaning of the term "restricts the use."
2. Enforcement of a regulation always involves its application. However, Section 4(1) uses the modifier "first" before "enforced" but not before "applied." This creates an ambiguity. The term "first" should be inserted before "applied."
3. If a person acquires land immediately after an agency has adopted a regulation and the regulation is first applied to that person, compensation may be required even though the agency intends to apply the regulation to all property in its jurisdiction.